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"Unjust, Cruel, and Even Irrational": The Stacking of Charges Under 924(c)

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"I think the stacking issue is a problem...I would support reform of the stacking provisions somewhat like you have it in the bill today." - Sen. Jeff Sessions (R-Ala.), on the Sentencing Reform and Corrections Act, October 22, 2015

Section 5 of the Sentencing Reform Act[1] and Section 104 of the the Sentencing Reform and Corrections Act[2] sought to make several changes to several federal sentencing policies. Among these proposed change were clarifications of 18 U.S. Code § 924(c),[3] which provides a sentencing enhancement ranging between 5 years and life in prison for the possession or use of a firearm in connection of certain federal crimes, including drug trafficking offenses.

Sentencing Enhancements Under 924(c)		
Type	**Statute**	**Sentence**
Possession	(1)(A)(i)	Not less than 5 years
Brandished	(1)(A)(ii)	Not less than 7 years
Discharged	(1)(A)(iii)	Not less than 10 years
Short-barreled rifle	(1)(B)(i)	Not less than 10 years
Short-barreled shotgun	(1)(B)(i)	Not less than 10 years
Semi-automatic	(1)(B)(i)	Not less than 10 years
Machine gun	(1)(B)(ii)	Not less than 30 years
Destructive device	(1)(B)(ii)	Not less than 30 years
Silencer of muffler	(1)(B)(ii)	Not less than 30 years
Second or subsequent offense	(1)(C)(i)	Not less than 25 years

[1] H.R. 3713, 114th Congress (2015) https://www.congress.gov/bill/114th-congress/house-bill/3713
[2] S. 2123, 114th Congress (2015) https://www.congress.gov/bill/114th-congress/senate-bill/2123
[3] 18 U.S. Code § 924 https://www.law.cornell.edu/uscode/text/18/924

Second or subsequent offense - machine gun	(1)(C)(ii)	Life
Second or subsequent offense - destructive device	(1)(C)(ii)	Life
Second or subsequent offense - silencer or muffler	(1)(C)(ii)	Life

The reforms were proposed because of certain federal criminal court cases in which prosecutors were required by law to stack charges to provide for lengthy federal prison sentences for offenders who were not true recidivists or truly violent offenders. As Sen. Mike Lee (R-Utah) said, "This is a misinterpretation of law rendered by courts across the country that we are now correcting."[4]

"I would add, moreover, that our provisions dealing with 924(c) are actually tougher on crime moving forward; they are tougher on violent offenders. This expands the application of 924(c) moving forward so it applies to violent offenders and not just drug offenders who are recidivists," Lee added.

Perhaps the most well known case is that of Weldon Angelos,[5] a first-time drug offender who sold roughly $1,000 worth of marijuana to a confidential informant between May 1, 2002 and June 18, 2002. Mr. Angelos, a father and successful business owner, was indicted on 20 charges. On December 16, 2003, he was convicted of 13 charges and sentenced to a mandatory term of 660 months (55 years) plus one day in federal prison and 36 months of supervised release. He would have been eligible for release at the age of 80.

The mandatory 55-year sentence was a direct result of three sentencing enhancements under 924(c). According to the confidential informant, Mr. Angelos was in possession of a firearm during two controlled buys. Additional firearms were found at his home. The first enhancement carried a 5-year prison term. The second and third enhancements carried separate 25-year terms. The sentences were to be carried out consecutively, not concurrently.

Although he was a first-time drug offender, Mr. Angelos was treated as a recidivist by prosecutors through the stacking of the charges under a single indictment.

The sentencing judge, Paul Cassell, expressed dismay at the sentence he was forced to render. In a memorandum opinion, Cassell wrote, "The court believes that to sentence Mr. Angelos to prison for the rest of his life is unjust, cruel, and even irrational. Adding 55 years on top of a sentence for drug dealing is far beyond the roughly two-year sentence that the congressionally-created expert agency (the United States Sentencing Commission) believes is appropriate for possessing firearms under the same

[4] Senate Committee on the Judiciary, "Executive Business Meeting," October 22, 2015 https://www.judiciary.senate.gov/meetings/executive-business-meeting-10-22-15
[5] Families Against Mandatory Minimums, "Weldon Angelos," Retrieved January 25, 2018 http://famm.org/weldon-angelos/

circumstances. The 55-year sentence substantially exceeds what the jury recommended to the court."[6]

Judge Cassell, who was appointed to the U.S. Court for the District of Utah Central Division by President George W. Bush, took the unusual step of recommending executive clemency in his imposition of the sentence of Mr. Angelos.

"I recommend that the President commute Mr. Angelos' sentence to a prison term of no more than 18 years, the average sentence recommended by the jury that heard this case," Judge Cassell wrote.[7] He also urged Congress to address the issues with 924(c), directing his opinion to be sent to the chairmen and ranking members of the House and Senate judiciary committees.

Since handing down the sentence, Judge Cassell has continued to advocate for a commutation of Mr. Angelos' sentence. Although he retired from public service after serving less than six years on the federal bench, Judge Cassell has given interviews on Mr. Angelos' sentence.

"If he had been an aircraft hijacker, he would have gotten 24 years in prison. If he's been a terrorist, he would have gotten 20 years in prison. If he was a child rapist, he would have gotten 11 years in prison," Judge Cassell said in a television interview. "And now I'm supposed to give him a 55-year sentence? I mean, that's just not right."[8]

Judge Cassell wrote to President Barack Obama to urge a commutation of Mr. Angelos' sentence.[9] Although the White House did not act to commute the sentence, Mr. Angelos, who acknowledges that the actions that landed him in prison were wrong, was released from federal prison in 2016 after serving 13 years of his sentence.[10] He has since held gainful employment and become an advocate for criminal justice reform. In January 2018, a motion of early termination of supervised release was granted after he served 19 months of the required 36 months of supervise released.

The Supreme Court may have determined[11] that the stacking of charges under a single indictment was constitutional, but Sentencing Reform Act and the Sentencing Reform and Corrections Act sought to clarify the application of the law in response to the decision. The goal was to make 924(c) a truly recidivist penalty. Both bills would have

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[6] Judge Paul G. Cassell, *Memorandum Opinion and Order Denying Motion to Find 18 U.S.C. 924(c) Unconstitutional, Imposing Sentence, and Recommending Executive Clemency*, November 16, 2004
[7] *Ibid.*
[8] Byron Pitts, Jackie Jesko, and Lauren Effron, "Former Federal Judge Regrets 55-Year Marijuana Sentence," ABC News, February 18, 2015 http://abcnews.go.com/US/federal-judge-regrets-55-year-marijuana-sentence/story?id=28869467
[9] Sari Horwitz, "Former federal judge to President Obama: Free the man I sentenced to 55 years in prison," The Washington Post, February 9, 2016 https://www.washingtonpost.com/news/post-nation/wp/2016/02/09/former-federal-judge-to-president-obama-free-the-man-i-sentenced-to-55-years-in-prison/
[10] Ben Winslow and Lauren Steinbrecher, "Sentenced to 55 years, Weldon Angelos is released from prison early," Fox 13, June 3, 2016 http://fox13now.com/2016/06/03/sentenced-to-55-years-weldon-angelos-is-released-from-prison-early/
[11] 508 U.S. 129 https://www.law.cornell.edu/supct/html/91-8199.ZO.html

also made the change retroactive, reduced the enhancement to 15 years from 25 years, and allowed the enhancement to apply to prior state-level convictions.

Senate Judiciary Committee Chairman Chuck Grassley (R-Iowa) has reintroduced the Sentencing Reform and Correction Act,[12] which includes revisions to 924(c). Although the Sentencing Reform Act has not yet been reintroduced by House Judiciary Committee Chairman Bob Goodlatte (R-Va.), the Prison Reform and Redemption Act,[13] sponsored by Rep. Doug Collins (R-Ga.) would serve as a likely vehicle for sentencing reforms similar to those found in the Sentencing Reform Act.

Should the House Judiciary Committee markup the Prison Reform and Redemption Act, FreedomWorks urges the committee to include reforms to 18 U.S. Code § 924(c) that would clarify congressional intent and ensure that sentences meted out by federal courts are, especially when compared to other serious crimes, just and rational.

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[12] S. 1917, 115th Congress (2017) https://www.congress.gov/bill/115th-congress/senate-bill/1917
[13] H.R. 3356, 115th Congress (2017) https://www.congress.gov/bill/115th-congress/house-bill/3356